REMARKS

This amendment is in response to the Final Rejection of the pending claims in the Office Action of March 7, 2006.

Claims 1 through 20 are currently pending in the application.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on Klein (U.S. Publication 2002/0007407)

Claims 1 through 3, 5 through 12, and 14 through 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein (U.S. Publication 2002/0007407) (hereinafter "Klein"). Applicant respectfully traverses this rejection, as hereinafter set forth.

Applicant asserts that to establish a *prima facie* case of obviousness under 35 U.S.C. § 103 three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure.

Independent claim 1 recites a method for establishing wireless communication between a computer and a local area network, comprising . . . receiving a signal broadcast by at least one wireless port of the local area network, evaluating the signal to determine a connection protocol type of the at least one wireless port, and initiating a connection protocol based on the connection protocol type of the at least one wireless port.

Regarding independent claim 1, the Office acknowledged that Klein does not teach evaluating a signal to determine a connection protocol type of at least one wireless port. *See Final Office Action mailed March 7, 2006, p. 3.* The Office asserted without documentary evidence that claim 1 is obvious because Klein teaches the invention could be implemented on a port basis. *Final Office Action mailed March 7, 2006, p. 3.*

Applicant asserts that even if Klein is applied on a port basis, there is no suggestion or motivation in Klein, or in the knowledge generally available in the art, to modify Klein to teach evaluating a signal to determine the connection protocol type. Applicant asserts that

2

Klein uses an iterative process to connect with a network, rather than evaluating a signal to determine a connection protocol type. Klein teaches that "[i]f attempts 550 to associate with the network fail 555, a different profile is loaded onto the terminal, and an attempt at a connection to and association with the network is made." *Paragraph [0045].* Applicant asserts that even if a Klein profile is created for individual wireless ports of a WLAN, the teachings of Klein would still require iteratively trying different profiles until a profile with a correct connection protocol for the individual port was found. Therefore, because Klein would still require an iterative process, whether the Klein profiles are generated on a network basis or a port basis, there is no suggestion or motivation to modify Klein to teach "evaluating said signal to determine a connection protocol type of said at least one wireless port."

Applicant further asserts that Klein does not teach implementation on a port basis. This point is relevant only in that the Office relied on the applicability of Klein to implementation on a port basis in concluding that Klein could be modified to teach the elements of claim 1. *See Final Office Action mailed March 7, 2006, p. 3.* Claim 1 is not defined by operation on either a network or a port basis. Klein teaches an "auto configuration program [that] can enable a user to store configurations for numerous WLANs such that when a user turns on the mobile unit 15, the program automatically loads [by an iterative process] the correct configuration for the WLAN that the mobile unit 15 is near." *Paragraph [0042].* Klein teaches that a WLAN may have multiple base stations and be used by multiple mobile and remote devices, but Klein does not teach uniquely identifying or creating unique profiles for each base station. *Paragraph [0028].* Rather, profiles may be created for "numerous WLANs." *Paragraph [0042].* Applicant asserts that therefore Klein does not teach implementation of the Klein invention on a port basis. Therefore, Klein may not be modified to teach "evaluating said signal to determine a connection protocol type of said at least one wireless port."

Additionally, Applicant notes that "[w]hile 'official notice' may be relied on, these circumstances should be rare when an application is under final rejection . . . . Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." *M.P.E.P. § 2144.03.* Applicant asserts that the knowledge is not generally available to modify Klein to teach "evaluating said signal

3

to determine a connection protocol type of said at least one wireless port." Applicant additionally asserts that therefore such knowledge is clearly not capable of instant and unquestionable demonstration as being well-known.

Therefore, for at least these reasons, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established because the cited art cannot and does not teach or suggest all the claim limitations of the claimed invention. Accordingly, independent claim 1 is allowable.

Claims 2, 3, and 5 through 9 are allowable for at least the reason of depending from allowable independent claim 1.

Independent claim 10 recites a method for selecting a connection protocol to be used to wirelessly connect a computer to a local area network, comprising . . . receiving at least one signal, determining whether the at least one signal is being broadcast by a wireless port of the local area network, evaluating the at least one signal to determine a connection protocol type of the wireless port by which the at least one signal is being broadcast, and if the at least one signal is being broadcast by a wireless port of the local area network, initiating a connection protocol that is compatible with the wireless port.

Regarding independent claim 10, the Office acknowledged that Klein does not teach evaluating at least one signal to determine a connection protocol type of a wireless port by which the at least one signal is being broadcast. *See Final Office Action mailed March 7, 2006, p. 3.* The Office asserted without documentary evidence that claim 10 is obvious because Klein teaches the invention could be implemented on a port basis. *Final Office Action mailed March 7, 2006, p. 3.*

Applicant asserts that even if Klein is applied on a port basis, there is no suggestion or motivation in Klein, or in the knowledge generally available in the art, to modify Klein to teach evaluating a signal to determine the connection protocol type. Applicant asserts that Klein uses an iterative process to connect with a network, rather than evaluating a signal to determine a connection protocol type. Klein teaches that "[i]f attempts 550 to associate with the network fail 555, a different profile is loaded onto the terminal, and an attempt at a connection to and association with the network is made." *Paragraph [0045].* Applicant asserts that even if a Klein profile is created for individual wireless ports of a WLAN, the teachings of Klein would still require iteratively trying different profiles until a profile with a

correct connection protocol for the individual port was found. Therefore, because Klein would still require an iterative process, whether the Klein profiles are generated on a network basis or a port basis, there is no suggestion or motivation to modify Klein to teach "evaluating said at least one signal to determine a connection protocol type of said wireless port by which said at least one signal is being broadcast."

Applicant further asserts that Klein does not teach implementation on a port basis. This point is relevant only in that the Office relied on the applicability of Klein to implementation on a port basis in concluding that Klein could be modified to teach the elements of claim 10. *See Final Office Action mailed March 7, 2006, p. 3.* Claim 10 is not defined by operation on either a network or a port basis. Klein teaches an "auto configuration program [that] can enable a user to store configurations for numerous WLANs such that when a user turns on the mobile unit 15, the program automatically loads [by an iterative process] the correct configuration for the WLAN that the mobile unit 15 is near." *Paragraph [0042].* Klein teaches that a WLAN may have multiple base stations and be used by multiple mobile and remote devices, but Klein does not teach uniquely identifying or creating unique profiles for each base station. *Paragraph [0028].* Rather, profiles may be created for "numerous WLANs." *Paragraph [0042].* Applicant asserts that therefore Klein does not teach implementation of the Klein invention on a port basis. Therefore, Klein may not be modified to teach "evaluating said at least one signal to determine a connection protocol type of said wireless port by which said at least one signal is being broadcast."

Additionally, Applicant notes that "[w]hile 'official notice' may be relied on, these circumstances should be rare when an application is under final rejection . . . . Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." *M.P.E.P. § 2144.03.* Applicant asserts that the knowledge is not generally available to modify Klein to teach "evaluating said at least one signal to determine a connection protocol type of said wireless port by which said at least one signal is being broadcast." Applicant additionally asserts that therefore such knowledge is clearly not capable of instant and unquestionable demonstration as being well-known.

Therefore, for at least these reasons, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established because the cited art cannot and does not teach or

suggest all the claim limitations of the claimed invention. Accordingly, independent claim 10 is allowable.

Claims 11, 12, and 14 are allowable for at least the reason of depending from allowable independent claim 10.

Independent claim 15 recites a workstation configured to select a connection protocol for establishing wireless communication with a local area network, comprising . . . at least one processor, at least one wireless network access device in communication with the at least one processor, and at least one storage medium configured to communicate with the at least one processor, the at least one storage medium comprising instructions stored in data format for . . . causing the at least one wireless network access device to receive at least one signal being broadcast by a wireless port of the local area network and to communicate the at least one signal to the at least one processor in a format recognizable by the at least one processor, enabling the at least one processor to evaluate the at least one signal to identify a connection protocol type of the wireless port from which the at least one signal was broadcast, and instructing the at least one processor to select a connection protocol appropriate for establishing communication with the wireless port based on the connection protocol type thereof.

Regarding independent claim 15, the Office acknowledged that Klein does not teach evaluating at least one signal to identify a connection protocol type of a wireless port. *See Final Office Action mailed March 7, 2006, p. 6.* The Office asserted without documentary evidence that claim 15 is obvious because Klein teaches the invention could be implemented on a port basis. *Final Office Action mailed March 7, 2006, p. 6.*

Applicant asserts that even if Klein is applied on a port basis, there is no suggestion or motivation in Klein, or in the knowledge generally available in the art, to modify Klein to teach evaluating a signal to identify the connection protocol type. Applicant asserts that Klein uses an iterative process to connect with a network, rather than evaluating a signal to identify a connection protocol type. Klein teaches that "[i]f attempts 550 to associate with the network fail 555, a different profile is loaded onto the terminal, and an attempt at a connection to and association with the network is made." *Paragraph [0045].* Applicant asserts that even if a Klein profile is created for individual wireless ports of a WLAN, the teachings of Klein would still require iteratively trying different profiles until a profile with a

correct connection protocol for the individual port was found. Therefore, because Klein would still require an iterative process, whether the Klein profiles are generated on a network basis or a port basis, there is no suggestion or motivation to modify Klein to teach "evaluat[ing] said at least one signal to identify a connection protocol type of said wireless port."

Applicant further asserts that Klein does not teach implementation on a port basis. This point is relevant only in that the Office relied on the applicability of Klein to implementation on a port basis in concluding that Klein could be modified to teach the elements of claim 15. *See Final Office Action mailed March 7, 2006, p. 6.* Claim 15 is not defined by operation on either a network or a port basis. Klein teaches an "auto configuration program [that] can enable a user to store configurations for numerous WLANs such that when a user turns on the mobile unit 15, the program automatically loads [by an iterative process] the correct configuration for the WLAN that the mobile unit 15 is near." *Paragraph [0042].* Klein teaches that a WLAN may have multiple base stations and be used by multiple mobile and remote devices, but Klein does not teach uniquely identifying or creating unique profiles for each base station. *Paragraph [0028].* Rather, profiles may be created for "numerous WLANs." *Paragraph [0042].* Applicant asserts that therefore Klein does not teach implementation of the Klein invention on a port basis. Therefore, Klein may not be modified to teach "evaluat[ing] said at least one signal to identify a connection protocol type of said wireless port."

Additionally, Applicant notes that "[w]hile 'official notice' may be relied on, these circumstances should be rare when an application is under final rejection . . . . Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." *M.P.E.P. § 2144.03.* Applicant asserts that the knowledge is not generally available to modify Klein to teach "evaluat[ing] said at least one signal to identify a connection protocol type of said wireless port from which said at least one signal was broadcast." Applicant additionally asserts that therefore such knowledge is clearly not capable of instant and unquestionable demonstration as being well-known.

Therefore, for at least these reasons, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established because the cited art cannot and does not teach or

suggest all the claim limitations of the claimed invention. Accordingly, independent claim 15 is allowable.

Claims 16 through 20 are allowable for at least the reason of depending from allowable independent claim 15.

Obviousness Rejection Based on Klein in view of Pinard *et al.* (U.S. Patent 6,582,700)

Claims 4 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein in view of Pinard *et al.* (U.S. Patent 6,582,700) (hereinafter "Pinard"). Applicant respectfully traverses this rejection, as hereinafter set forth.

Regarding claim 4, Applicant asserts that Klein and Pinard, assuming combinability *arguendo*, do not teach or suggest all of the claim limitations of independent claim 1 to establish a *prima facie* case of obviousness regarding the invention of claim 1 under 35 U.S.C. § 103. Therefore, independent claim 1 is allowable. Claim 4 is allowable for at least the reason of depending from allowable independent claim 1.

Regarding claim 13, Applicant asserts that Klein and Pinard, assuming combinability *arguendo*, do not teach or suggest all of the claim limitations of independent claim 10 to establish a *prima facie* case of obviousness regarding the invention of claim 10 under 35 U.S.C. § 103. Therefore, independent claim 10 is allowable. Claim 13 is allowable for at least the reason of depending from allowable independent claim 10.

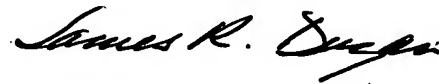Applicant asserts that claims 1 through 20 are clearly allowable over the cited art.

Applicant request entry of this response for the following reasons:

The response is timely filed.

The response does not require any further search or consideration.

The response indicates the application is in condition for allowance.

Respectfully submitted,

James R. Duzan

James R. Duzan
Registration No. 28,393
Attorney for Applicant
TRASKBRITT, PC
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: May 3, 2006
JRD/ps:dlm:lmh

Document in ProLaw